

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 TRANSPORT TECHNOLOGIES,
12 LLC, a California limited liability
13 company,

14 Plaintiff,

15 v.
16 LOS ANGELES COUNTY
17 METROPOLITAN
TRANSPORTATION AUTHORITY,
a public entity,

18 Defendant.

19 LOS ANGELES COUNTY
20 METROPOLITAN
21 TRANSPORTATION AUTHORITY,
a public entity,

22 Third Party Plaintiff,

23 v.
24 ATKINSON CONTRACTORS, LP.
a limited partnership,

25 Third Party Defendant.

10 No. 2:15-cv-06423-RSWL-MRW
11 **STIPULATED PROTECTIVE
12 ORDER**

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation
6 maybe warranted. Accordingly, the parties hereby stipulate to and petition the
7 Court to enter the following Stipulated Protective Order. The parties acknowledge
8 that this Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 Some of the material expected to be exchanged between the parties is
18 information that is not generally available to the public, and that is maintained in
19 confidence by the Producing Party. These materials include technical, proprietary,
20 or security sensitive information about the accused systems, and financial
21 information of the parties that is maintained as not publicly available and qualifies
22 for protection as confidential commercial information under Rule 26(c). The
23 parties further expect that third party discovery will be obtained in this case that
24 will include technical and proprietary information about the accused systems,
25 technical and proprietary information contained in procurement proposals
26 submitted by third parties, and financial information of the third parties that is
27 maintained as not publicly available and qualifies for protection as confidential
28 commercial information under Rule 26(c).

1 Should such information be available for public disclosure, harm to the
 2 Producing Party could result in the form of compromised ability to compete
 3 because competitors and the public would have access to information to which they
 4 would otherwise not have access. Allowing the public access to technical
 5 information would enable competitors to have access to proprietary information to
 6 which they would not otherwise have access, which could decrease the value of the
 7 Producing Party's confidential technical information and compromise their ability
 8 to compete.

9

10 2. **DEFINITIONS**

11 2.1 **Action:** *Transport Technologies, LLC v. Los Angeles County*
 12 *Metropolitan Transportation Authority*, Case No. 2:15-cv-06423-RSWL-MRW.

13 2.2 **Challenging Party:** a Party or Non-Party that challenges the
 14 designation of information or items under this Order.

15 2.3 **“CONFIDENTIAL” Information or Items:** information (regardless of
 16 how it is generated, stored or maintained) or tangible things that qualify for
 17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
 18 the Good Cause Statement.

19 2.4 **Counsel:** Outside Counsel of Record and House Counsel (as well as
 20 their support staff).

21 2.5 **Designating Party:** a Party or Non-Party that designates information or
 22 items that it produces in disclosures or in responses to discovery as
 23 “CONFIDENTIAL.”

24 2.6 **Disclosure or Discovery Material:** all items or information, regardless
 25 of the medium or manner in which it is generated, stored, or maintained (including,
 26 among other things, testimony, transcripts, and tangible things), that are produced
 27 or generated in disclosures or responses to discovery in this matter.

28 2.7 **Expert:** a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as
 2 an expert witness or as a consultant in this Action.

3 2.8 House Counsel: attorneys who are employees of a party to this Action,
 4 or are employees of County Counsel of Los Angeles County, who serves as House
 5 Counsel of a party to this Action. House Counsel does not include Outside Counsel
 6 of Record or any other outside counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association,
 8 or other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
 10 party to this Action but are retained to represent or advise a party to this Action and
 11 have appeared in this Action on behalf of that party or are affiliated with a law firm
 12 which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
 14 employees, consultants, retained experts, and Outside Counsel of Record (and their
 15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
 17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
 19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
 23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
 25 Material from a Producing Party.

26

27 3. SCOPE

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also (1) any information copied or
2 extracted from Protected Material; (2) all copies, excerpts, summaries, or
3 compilations of Protected Material; and (3) any testimony, conversations, or
4 presentations by Parties or their Counsel that might reveal Protected Material. Any
5 use of Protected Material at trial shall be governed by the orders of the trial judge.
6 This Order does not govern the use of Protected Material at trial.

7

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
20 Each Party or Non-Party that designates information or items for protection under
21 this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. The Designating Party must designate for
23 protection only those parts of material, documents, items, or oral or written
24 communications that qualify so that other portions of the material, documents,
25 items, or communications for which protection is not warranted are not swept
26 unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber the case development process or to
2 impose unnecessary expenses and burdens on other parties) may expose the
3 Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
10 under this Order must be clearly so designated before the material is disclosed or
11 produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party must
26 determine which documents, or portions thereof, qualify for protection under this
27 Order. Then, before producing the specified documents, the Producing Party must
28 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.

1 If only a portion or portions of the material on a page qualifies for protection, the
 2 Producing Party also must clearly identify the protected portion(s) (e.g., by making
 3 appropriate markings in the margins).

4 (b) for testimony or information given in depositions or at hearings that
 5 the Designating Party identify the Disclosure or Discovery Material on the record,
 6 or within 14 days of receipt of the final transcript.

7 (c) for information produced in some form other than documentary and
 8 for any other tangible items, that the Producing Party affix in a prominent place on
 9 the exterior of the container or containers in which the information is stored the
 10 legend “CONFIDENTIAL.” If only a portion or portions of the information
 11 warrants protection, the Producing Party, to the extent practicable, shall identify the
 12 protected portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 14 failure to designate qualified information or items does not, standing alone, waive
 15 the Designating Party’s right to secure protection under this Order for such
 16 material. Upon timely correction of a designation, the Receiving Party must make
 17 reasonable efforts to assure that the material is treated in accordance with the
 18 provisions of this Order.

19

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 22 designation of confidentiality at any time that is consistent with the Court’s
 23 Scheduling Order.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 25 resolution process (and, if necessary, file a discovery motion) under Local Rule
 26 37.1 et seq.

27 6.3 The burden of persuasion in any such challenge proceeding shall be on
 28 the Designating Party. Frivolous challenges, and those made for an improper

1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation until the Court rules on the
6 challenge.

7

8 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a Non-Party in connection with this
11 Action only for prosecuting, defending, or attempting to settle this Action. Such
12 Protected Material may be disclosed only to the categories of persons and under the
13 conditions described in this Order. When the Action has been terminated, a
14 Receiving Party must comply with the provisions of section 13 below (FINAL
15 DISPOSITION).

16 Protected Material must be stored and maintained by a Receiving Party at a
17 location and in a secure manner that ensures that access is limited to the persons
18 authorized under this Order.

19 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless
20 otherwise ordered by the court or permitted in writing by the Designating Party, a
21 Receiving Party may disclose any information or item designated
22 “CONFIDENTIAL” only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action,
24 as well as employees of said Outside Counsel of Record to whom it is reasonably
25 necessary to disclose the information for this Action;

26 (b) the officers, directors, and employees (including House
27 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
28 Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as

1 “CONFIDENTIAL” that Party must:

2 (a) promptly notify in writing the Designating Party. Such
3 notification shall include a copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or
5 order to issue in the other litigation that some or all of the material covered by the
6 subpoena or order is subject to this Protective Order. Such notification shall
7 include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be
9 pursued by the Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this
12 action as “CONFIDENTIAL” before a determination by the court from which the
13 subpoena or order issued, unless the Party has obtained the Designating Party’s
14 permission. The Designating Party shall bear the burden and expense of seeking
15 protection in that court of its confidential material and nothing in these provisions
16 should be construed as authorizing or encouraging a Receiving Party in this Action
17 to disobey a lawful directive from another court.

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19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced
22 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
23 information produced by Non-Parties in connection with this litigation is protected
24 by the remedies and relief provided by this Order. Nothing in these provisions
25 should be construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery
27 request, to produce a Non-Party’s confidential information in its possession, and the
28 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s

confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 No production of material in this action, whether made pursuant to this Order
4 or otherwise, shall be deemed a waiver of any legally cognizable privilege to
5 withhold such material. The production in this action of any material that is subject
6 to a claim of attorney/client privilege, the work product doctrine; or any other
7 applicable privilege or ground for withholding production shall be deemed to be
8 inadvertent and to be without prejudice to any claim that such material is protected
9 by the attorney/client privilege, the work product doctrine, or any other applicable
10 privilege or ground for withholding production, and no party shall be held to have
11 waived any rights by such production.

12 Upon the discovery by the Producing Party of a disclosure of material for
13 which a privilege is asserted, the Producing Party shall promptly notify the party in
14 receipt of the material in writing of the disclosure, identify the document that
15 contains such information, and immediately takes steps to preclude further
16 disclosure. In such an event, the party in receipt of the material will return all copies
17 of identified materials within seven (7) business days and treat those materials as if
18 they had been initially excluded from the production.

19 If, on the other hand, it is the Receiving Party that discovers materials
20 produced to it that clearly appear to be privileged or work product protected
21 materials, the party receiving such materials should refrain from examining the
22 materials any more than is essential to ascertain if the materials are privileged, and
23 shall immediately notify the Producing Party that he or she possesses material that
24 appears to be privileged. In such an event, the party in receipt of the material will
25 return all copies of identified materials within seven (7) business days and treat
26 those materials as if they had been initially excluded from the production.

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1 12. PRIVILEGE LOG LIMITATION

2 If a party withholds a document from production on a claim of privilege or as
3 trial preparation material, the parties agree that the obligations of Rule 26(b)(5)(A)
4 shall not apply if the document was created after May 23, 2014.

5

6 13. MISCELLANEOUS

7 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future. In particular, the parties
9 recognize that circumstances may arise that require a heightened level of protection
10 from disclosure, and the parties acknowledge the possibility that this Order may
11 need to be modified to account for such circumstances.

12 13.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in
15 this Stipulated Protective Order. Similarly, no Party waives any right to object on
16 any ground to use in evidence of any of the material covered by this Protective
17 Order.

18 13.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the court.

24 14. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the
2 Protected Material. Whether the Protected Material is returned or destroyed, the
3 Receiving Party must submit a written certification to the Producing Party (and, if
4 not the same person or entity, to the Designating Party) by the 60 day deadline that
5 (1) identifies (by category, where appropriate) all the Protected Material that was
6 returned or destroyed and (2) affirms that the Receiving Party has not retained any
7 copies, abstracts, compilations, summaries or any other format reproducing or
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel
9 are entitled to retain an archival copy of all pleadings, motion papers, trial,
10 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
11 and trial exhibits, expert reports, attorney work product, and consultant and expert
12 work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this Protective
14 Order as set forth in Section 4 (DURATION).

15 15. Any willful violation of this Order may be punished by civil or criminal
16 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
17 authorities, or other appropriate action at the discretion of the Court.

18
19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20
21 Dated: February 23, 2016

FREITAS ANGELL & WEINBERG LLP

22
23
24 /s/ Jason S. Angell
25 Jason S. Angell
26 Attorneys for Plaintiff
27 Transport Technologies, LLC
28

1 Dated: February 23, 2016

HANSON BRIDGETT LLP

3 /s/Russell C. Petersen

4 Russell C. Petersen
5 Attorneys for Defendant
6 Los Angeles County
7 Metropolitan Transportation Authority

8 Dated: February 23, 2016

MCKOOL SMITH HENNIGAN P.C.

10 /s/Phillip J. Lee

11 Phillip J. Lee
12 Attorneys for Third-party Defendant
13 Atkinson Contractors, LP

14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.



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17 DATED: February 24, 2016
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HON. MICHAEL R. WILNER
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [full name], of _____
4 [full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on [date] in the case of
7 *Transport Technologies, LLC v. Los Angeles County Metropolitan Transportation*
8 *Authority*, Case No. 2:15-cv-06423-RS WL-MRW. I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective
13 Order to any person or entity except in strict compliance with the provisions of this
14 Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [full
19 name] of _____ [full address and
20 telephone number] as my California agent for service of process in connection
21 with this action or any proceedings related to enforcement of this Stipulated
22 Protective Order.

23
24 Date: _____

25 City and State where signed: _____
26

27 Printed name: _____
28 Signature: _____

1 ATTESTATION

2 I, Jason S. Angell, am the ECF User whose ID and password are being used
3 to file this STIPULATED PROTECTIVE ORDER. I attest that, pursuant to United
4 States District Court, Central District of California Civil L.R. 5-4.3.4, concurrence
5 in the filing of this document has been obtained from all counsel. I declare under
6 penalty of perjury that the foregoing is true and correct.

7 /s/Jason S. Angell

8 Jason S. Angell

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